

## **2012 Legislative Updates**

### **2012 Legislative Session Comes to a Close: Bills Make Changes to DEQ Boards, Underground Storage Tanks, Emissions Testing**

The State legislature passed a number of environmental bills during the 45-day session ending March 8th. Some made minor modifications to existing statutes, while others caused substantial changes. Here are some of the highlights from the 2012 session, along with descriptions of the effects these bills will have on DEQ and the environment.

#### **Department of Environmental Quality Boards**

Two bills sponsored by Senator Margaret Dayton (R-Orem) make substantial changes to the functioning of DEQ boards. Taken together, these two pieces of legislation mark a shift in the functioning of DEQ boards, concentrating board efforts on policymaking and rulemaking rather than the adjudication of disputes.

Senate Bill 11 specifically addresses adjudicatory proceedings. This legislation creates a distinction between adjudicative proceedings related to a permit order and those that are not. The bill contains detailed statutory provisions for permit review adjudicative proceedings, including the duties of the administrative law judge, the proper preservation of issues or arguments for purposes of an appeal, and rigorous requirements for parties seeking review, intervention, or the issuance of a stay for permit orders.

Senate Bill 21 amends a broader range of board roles and responsibilities. The bill modifies the composition of boards, including size and representation, and specifies the qualifications required for board members. It clarifies the duties and position of division directors serving on boards. It gives the Department rulemaking authority to establish attendance standards and conflict of interest procedures for board members, transfers adjudicatory powers from the boards to the executive director, and provides a transition period to implement these changes.

#### **Motor Vehicle Emissions**

Legislators proposed several bills that sought to exempt certain vehicles from the current emissions testing schedule. The Division of Air Quality expressed concern this legislation would violate the provisions of the State Implementation Plan and contribute to air quality problems in nonattainment areas. Another bill, subsequently amended, would have struck down Salt Lake City's Anti-Idling Ordinance. One house bill that would have threatened

Utah's compliance with the State SIP by changing the schedule for emissions testing was defeated.

Bills passed:

H.B. 407 New Car Safety and Emissions Inspection (Representative Don Ipson, R-St. George). Exempts vehicles less than two years old from emissions testing.

H.B. 104S1 Local Highway Authority Regulatory Powers (Representative Wayne Harper, R-West Jordan). Provides that local anti-idling ordinances may be enforced on public property, or private property if the property is open to the public and the owner posts a sign informing the public of the ordinance requirements.

### **Other Highlights**

A new two-year Economic Development Task Force will review public and private sector efforts to improve air quality and suggest changes to improve air quality. H.B. 28

The Air Quality Board can establish work practice, certification, and clearance air sampling requirements for asbestos. H.B. 189

Local health departments cannot establish standards stricter than federal standards except under certain circumstances. H. B. 313

Certain recycling market development zone credits have been carried forward to January 2021. H.B. 35

Mercury Switch Removal Act reauthorized for 5 years. S.B. 133

Radiation Control Act removed from the sunset list. S.B. 132

A joint resolution by the legislature encourages the Utah State Board of Education and Utah's school districts to consider ways to establish green schools in the state. HJR 1

A concurrent resolution by the legislature and the Governor approves the state's participation in the Interlocal Cooperation Agreement Establishing the Jordan River Commission. SCR 7

Most of the new laws will take effect in mid-May, with the exception of the budget bills, which take effect at the start of the fiscal year, July 1, 2012.

S. B. 21 was signed by the Governor and is effective on May 8<sup>th</sup>.

**General Description:**

This bill changes the composition of each board created under Title 19, Environmental Quality Code, requires specific qualifications for a board member, subjects a board member to certain requirements, transfers some powers and duties from the boards to the executive director or division directors, and gives rulemaking authority to the department.

**Highlighted Provisions:** This bill: gives rulemaking authority to the Department of Environmental Quality to create attendance standards and conflicts of interest procedures for board members and to make procedural rules for adjudicative proceedings; changes the composition of each board created under Title 19, Environmental Quality Code; provides a transition to the new composition of each board created under Title 19, Environmental Quality Code; establishes qualifications for board members; requires board members to comply with attendance standards and conflict of interest procedures; provides for the executive director of the Department of Environmental Quality to take final dispositive action on an adjudicative proceeding under Title 19, Environmental Quality Code; transfers powers and duties from a board to a division director; provides for certain division boards to approve enforcement settlements negotiated by a division director that exceed \$25,000; and makes technical changes.

19-1-301. Adjudicative proceedings. The executive director takes “dispositive action” in response to a request for agency action rather than the boards.

**19-2-103 Members of the Air Quality Board**

Current Board	New Board (March 1, 2013)
Executive Director DEQ	Executive Director or designee, votes to break a tie
Physician not with industry	
Professional Engineer not with industry	
	Physician, P.E. or Scientist not with industry
Municipal Government	
County Government	
	Government, not federal
	Government, not federal
Agriculture	
Mining Industry	Mining Industry
Manufacturing Industry	Manufacturing Industry
Fuel Industry	Fuels Industry
Public – Environmental	
Public	
	Public – NGO that represents community interest
	Public – trained in public health

19-2-104 Powers of the Board (3)(b)(i) – review and approve or disapprove settlement negotiations that requires a civil penalty of \$25,000 or more.

19-2-104 and 107 transfers the implementation of the administrative functions of the air quality program from the board to the director of the Division of Air Quality.